

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 AID-05 CIAE-00 COME-00 EB-08 FRB-01
INR-10 NSAE-00 ICA-20 TRSE-00 XMB-04 OPIC-06
SP-02 LAB-04 SIL-01 OMB-01 NSC-05 SS-15 STR-07
CEA-01 PA-02 /105 W
-----053633 021903Z /64
R 021721Z JUN 78
FM AMEMBASSY LONDON
TO SECSTATE WASHDC 6784

UNCLAS SECTION 01 OF 02 LONDON 08782

E.O.11652: N/A
TAGS: ETRD, EIND, UK, PGOV
SUBJECT: PARLIAMENTARY GREEN PAPER: REVIEW OF MONOPOL-
IES AND MERGERS POLICY

CONSUMER PROTECTION HAS PRESENTED TO PARLIAMENT A "GREEN PAPER" (A DISCUSSION DOCUMENT, AS CONTRASTED WITH A "WHITE PAPER" POLICY DOCUMENT) REVIEWING BRITAIN'S POLICY ON MONOPOLIES AND MERGERS AND MAKING CERTAIN RECOMMENDATIONS FOR THE FUTURE. THE PAPER IS WELL RESEARCHED AND DOCUMENTED BUT MAKES FEW CONCRETE PROPOSALS FOR REFORM: MINOR CHANGES IN GUIDELINES FOR REFERRING MERGERS TO THE MONOPOLIES AND MERGERS COMMISSION (MMC), CRITICAL ASSESSMENT OF MERGERS IMPACTING SIGNIFICANTLY ON COMPETITION INCREASE IN "GROSS ASSETS" CRITERION FOR REFERRING MERGERS TO THE MMC FROM 5 TO 8 MILLION POUNDS, MERGER IN DUE COURSE OF THE MONOPOLIES AND PRICE COMMISSIONS, FURTHER STUDY OF THE RESTRICTIVE PRACTICES LAW, AND OF RESTRICTIVE LABOR PRACTICES AND NATIONALIZED INDUSTRIES.
END SUMMARY.

1. THE GREEN PAPER'S RECOMMENDATIONS, LIKE EXISTING LAW AND GOVERNMENT POLICY SINCE THE WAR, CALL FOR A PRAGMATIC
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IC POLICY, DEEPLY INFLUENCED BY THE FEAR THAT AN UNQUALIFIED AND UNAMBIGUOUS ANTI-MERGER "ANTI-BIG" POLICY WOULD HAVE AN UNFAVORABLE EFFECT ON BRITAIN'S COMPETITIVENESS IN INTERNATIONAL MARKETS. AN ASSUMPTION IS MADE THAT COMPETITION FROM IMPORTS WILL IN MOST CASES BE SUFFICIENT TO PREVENT THE MERGED CONGLOMERATE FROM EXERCISING MONOPOLY RENTS IN ITS PRICING POLICY.

2. YET THE PAPER ADMITS TO A RAPID INCREASE IN BRITAIN' INDUSTRIAL CONCENTRATION (THE 100 LARGEST FIRMS PRODUCE IN EXCESS OF 40 PERCENT OF MANUFACTURES, AT LEAST HALF OF THE INCREASE IN CONCENTRATION BEING DUE TO MERGERS) AND CITES AN MMC FINDING OF ANTI-COMPETITIVE PRACTICE IN 29 OUT OF 32 MARKETS STUDIED.

3. PERTINENT QUOTES FROM THE GREEN PAPER FOLLOW:

"PRESENT MERGERS POLICY IS BASED ON THE ASSUMPTION THAT MERGERS ARE ON BALANCE BENEFICIAL. DECISIONS ON WHETHER TO REFER MERGERS TO THE MMC FOR FULL INVESTIGATION ARE TAKEN QUICKLY, ON THE BASIS OF BROAD CONSIDERATIONS OF THE PUBLIC INTEREST. THE SCOPE FOR MONOPOLY INVESTIGATIONS BY THE MMC IS RESTRICTED. THEY TAKE A LONG TIME TO COMPLETE AND IMPOSE A HEAVY BURDEN ON FIRMS UNDER INVESTIGATION."

"MERGERS POLICY SHOULD BE SHIFTED TO A NEUTRAL POSITION" BY GOVERNMENT STATEMENT OF A NEW POLICY, BY NEW NON-STATUTORY GUIDELINES TO THE MERGERS PANEL TO ASSESS CRITICALLY "ALL MERGERS THAT WOULD HAVE A SIGNIFICANT EFFECT ON COMPETITION OR ECONOMIC POWER," AND BY AMENDMENT OF THE FAIR TRADING ACT OF 1973 TO ALTER THE CRITERIA UNDER WHICH THE MMC MAKES ITS FINDINGS.

"A CONTINUING PROGRAMME OF MONOPOLY INVESTIGATIONS IS REQUIRED. THIS, SUPPLEMENTED BY A STRENGTHENING OF UNCLASSIFIED

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MERGERS POLICY AND NEW MEASURES TO DEAL WITH UNCOMPETITIVE PRACTICES BY SINGLE FIRMS SHOULD PROVIDE ADEQUATE MEANS TO INVESTIGATE LARGE COMPANIES. BUT THERE IS A CASE FOR DEFINING OLIGOPOLY IN TERMS OF MARKET STRUCTURE."

"FINDINGS IN MMC MONOPOLY INVESTIGATIONS ABOUT CERTAIN UNCOMPETITIVE PRACTICES BY SINGLE FIRMS CONSTITUTE A PRIMA FACIE CASE FOR CONCLUDING THAT THEY ARE GENERALLY AGAINST THE PUBLIC INTEREST. CONSIDERATION SHOULD THEREFORE BE GIVEN TO DEALING WITH SUCH PRACTICES ON A MORE GENERAL BASIS THAN CAN BE PROVIDED BY MMC MONOPOLY INVESTIGATIONS."

4. THE GREEN PAPER HAS FAILED TO STIMULATE PUBLIC DIALOGUE, OR EVEN PUBLIC EXPRESSIONS OF OPINION. ASIDE FROM BRIEF SUMMARIES IN THE PRESS, THE RESPONSE HAS BEEN HO-HUM, PERHAPS BECAUSE, AS "THE ECONOMIST" PUT IT, THE PAPER "PROPOSES THAT IN FUTURE WICKEDNESS BE SUPPRESSED, VIRTUE ENCOURAGED AND THE NATIONAL INTEREST REIGN SUPREME." IT IS, IN A WORD, NON-CONTENTIOUS. ALTHOUGH THE LABOR PARTY SUPPORTS IN PRINCIPLE STRONGER ANTI-MONOPOLY ACTION, IT HAS MADE NO OFFICIAL STATEMENT ON THE REPORT.

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SP-02 LAB-04 SIL-01 OMB-01 NSC-05 SS-15 STR-07
CEA-01 PA-02 /105 W

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5. THE TRADES UNION CONGRESS (TUC) GENERAL COUNCIL IS SCHEDULED TO DISCUSS THE REPORT AT ITS EXECUTIVE COMMITTEE MEETING JUNE 7, AT WHICH TIME AN OFFICIAL RESPONSE WILL BE FORMULATED. MEANWHILE, THE TUC STANDS BY ITS PREVIOUS STATEMENTS THAT MONOPOLIES AND MERGERS POLICY SHOULD BE FIXED BY REFERENCE TO "THE PUBLIC INTEREST" -- DEFINED AS THAT OF LABOR AND CONSUMERS TAKEN TOGETHER -- RATHER THAN BY REFERENCE TO EFFICIENCY OF PLANT OR OPTIMUM COMPETITIVENESS. IN OTHER WORDS, THE TUC SEEKS TO PROTECT JOBS ABOVE ALL; CONSUMER INTERESTS ARE SECONDARY IN ITS CONCEPT OF AN APPROPRIATE MERGER POLICY.

6. THE CONFEDERATION OF BRITISH INDUSTRY (CBI) HAD TWO COMMENTS ON THE REPORT: (A) THEY WOULD STRONGLY OPPOSE ANY CONSOLIDATION OF THE MMC AND THE PRICE COMMISSION, SINCE THIS WOULD GIVE UNWARRANTED RESPECTABILITY TO PRICE CONTROLS; AND (2) THE CBI IS LOOKING CLOSELY AT THE POSSIBLE EMPHASIS ON MERGER CONTROLS REPRESENTED BY THE REPORT'S RECOMMENDATIONS, BEING CONCERNED LEST IN PRACTICE IT LEAD TO THE BARRING OF MERGERS WHICH ARE IN THE PUBLIC INTEREST.

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7. THE "NEW STATESMAN" IN ITS JUNE 2 ISSUE, SAW THE GREEN PAPER AS MARKING AN ADMISSION THAT THREE DECADES OF GOVERNMENT POLICY HAS ASSUMED MERGERS AND TAKE-OVERS TO BE IN THE PUBLIC INTEREST, YIELDING FIRMS "WHOSE EXPERTISE CONSISTED CHIEFLY IN GROWTH-BY-ACQUISITION." "THE POLICY IS SHOWN TO HAVE GIVEN US AN ECONOMY DOMINATED BY GIANT FIRMS TO AN EXTENT UNTRUE IN EUROPE OR AMERICA, WITH NO DIRECT EVIDENCE OF INCREASED EFFICIENCY AND MUCH TO SUGGEST THE EXACT OPPOSITE."

8. COMMENT: THE RETURNS ARE NOT YET ALL IN ON THE POLICY PAPER. IT IS CLEAR, HOWEVER, THAT THERE IS LESS PUBLIC CONCERN WITH ECONOMIC WELFARE MAXIMIZATION THAN WITH (1) JOB PROTECTION (LABOUR) AND (2) CONTINUED ACCESS TO POTENTIAL ECONOMIES OF SCALE (BUSINESS). DESPITE EVIDENCE THAT PRICES MIGHT BE HIGHER UNDER THE CURRENT REGIME THAN UNDER ONE LESS HOSPITABLE TO MERGERS, THIS IS NOT MUCH MENTIONED IN THE REPORT AND THE CONCERN EXPRESSED OUTSIDE THE GOVERNMENT IS WITH MERGERS IMPACT ON "PUBLIC INTEREST" WITH DIFFERENT SECTORS OF THE ECONOMY DEFINING THIS PHRASE TO SUIT THEMSELVES.

BREWSTER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: PAPERS, CONSUMER PROTECTION, MONOPOLIES
Control Number: n/a
Copy: SINGLE
Draft Date: 02 jun 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 jan 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978LONDON08782
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780231-0864
Format: TEL
From: LONDON
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t197806103/aaaadkli.tel
Line Count: 197
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 4d26777c-c288-dd11-92da-001cc4696bcc
Office: ACTION EUR
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 29 mar 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2146370
Secure: OPEN
Status: NATIVE
Subject: PARLIAMENTARY GREEN PAPER: REVIEW OF MONOPOL-IES AND MERGERS POLICY CONSUMER PROTECTION HAS PRESENTED TO PARLIAMENT A
TAGS: ETRD, EIND, PGOV, UK
To: STATE
Type: TE
vdkgvkey: odbc://SAS/SAS.dbo.SAS_Docs/4d26777c-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014